

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1244 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
YOGESHBHAI GARG

Versus

STATE OF GUJARAT  
-----

Appearance:

M/S THAKKAR ASSOC. for Petitioner  
MR KT DAVE, AGP for Respondent No. 1, 2, 3  
-----

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2000

ORAL JUDGEMENT

#. Petitioner - Yogeshbhai Garg is Accounts Manager of K.S. Oils Limited Company doing production of rapeseed oil and Soyabin oil under a valid license. He approaches this Court with this petition seeking following reliefs.

"(A) Your Lordships be pleased to issue appropriate writ, order or direction for quashing and setting aside the impugned decision of the respondents to detain the petitioner u/s. 3(1) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 as being illegal, arbitrary, unjust, null and void.

(B) Your Lordships be pleased to restrain the respondents from detaining the petitioner under the provisions of Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980, pending admission, hearing and final disposal of this petition.

According to the petitioner, an order is passed to detain him under the provisions of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short). That order is wrongly passed and in order to substantiate this submission, it has been pointed out that neither the rapeseed oil nor Soyabnean oil are controlled items. For certain irregularities, stock has been seized and on that very count, order of detention is passed. The petitioner has approached this Court at a stage prior to execution of order of detention. The order of detention is not served on the petitioner and the contents thereof are therefore, not known to the petitioner, obviously.

#. Mr. P.M.Thakkar, learned Senior Counsel appearing for the petitioner has drawn attention of this Court to the fact that neither Soyabnean nor Rapeseed oil are controlled items. Some irregularities were detected during the inspection by the Civil Supplies Department, for which goods have been seized and now the petitioner is sought to be detained under the PBM Act. He submitted that the business is recently started and if there is some mistake committed by petitioner, it is only an irregularity and not a deliberate action for making profit. As such, neither rapeseed oil nor Soyabin oil have any restriction on price. It was, therefore, urged that the petition may be entertained at this pre-detention state in light of the decision of Apex Court in the case of Additional Secretary to Govt. of India v. Alka Subhash Gadia, 1990 SCC (Suppl) (3) 583.

Mr. Thakkar submitted that he is conscious about the fact that the Court will exercise powers at pre-execution stage in a detention matter in an exceptional case, if it is shown that the case falls in any of the categories enumerated in the case between Alka Subhash Gadia (Supra). He therefore submitted that the case of the petitioner would fall within categories No. (3) and (4) as enumerated in the case of Alka Subhash Gadia (Supra), namely, (1) that the order is passed for a wrong purpose and (2) that it is passed on vague, extraneous and irrelevant ground. Mr. Thakkar submitted that since the grounds of detention are not served and the petitioner is not aware of the details of grounds of detention, he will not be able to comment much on what is stated in the grounds of detention. But he stated that there is no other reason which could possibly pass of any detention order against the petitioner.

#. Mr. K.T.Dave, learned AGP vehemently opposed this petition. According to Mr. Dave, the petition may not be entertained at the stage of pre-detention as the case of the petitioner does not fall under any of the categories stated in the case of Alka Subhash Gadia (Supra). The petitioner is, therefore, not entitled to the relief claimed in the petition and the same may be dismissed.

#. Having regard to rival side contentions and having regard to the file of the department produced by learned AGP before this Court for inspection, it appears that the order of detention is passed against the petitioner on February 15, 2000 which is yet not executed.

#. Before entertaining this petition, the question whether this Court should interfere in such petition is required to be considered.

#. It is now a settled proposition of law that in cases of pre-execution petitions, the Court is not without a jurisdiction to entertain petition under Article 226 of the Constitution, but the Courts are expected to exercise these powers with a self-restraint in rarest of rare cases and, as held in the case of Alka Subhash Gadia (supra), the categories are enumerated. The categories are (1) that the impugned order is not passed under the Act under which it is purported to have passed; (2) that it is sought to be executed against a wrong person' (3) that it is passed for a wrong purpose; (4) that it is passed on vague, extraneous and irrelevant ground or (5) that the authority which passed it had no authority to do

so. If the petitioner is able to show that his case falls in any of the categories enumerated in Alka Subhash Gadia's case or in any of the categories which is of a similar species, the Court may entertain the petition and grant protection to the petitioner. It is now, therefore, required to be seen whether the case of the petitioner falls within the categories stated in Alka Subhash Gadia's case.

#. Mr. Thakkar, learned Senior Counsel, appearing for the petitioner has stated that the case of the petitioner would fall in category No. (3) and (4), i.e. the order is passed for a wrong purpose and that it is passed on vague, extraneous and irrelevant grounds. The petitioner is, however, at loss to substantiate his arguments, with material as the grounds are not with him. It is, however, asserted by the petitioner that it is for such purpose. On the other hand, the authority concerned has, in the affidavit in reply, asserted otherwise and has categorically denied that the order is not for the wrong purpose or that it is based on vague, extraneous and irrelevant grounds. It is, therefore, a case of word against word.

#. The Court, was, therefore constrained to call for the file of the authority concerned for its inspection to arrive at a conclusion as to whose say can be reasonably accepted.

#. This Court has inspected the file of the detaining authority along with the relevant documents. The Court is conscious about the fact that as per settled proposition of law, the detenu/petitioner is not entitled and expected to know the grounds of detention or its details and therefore, while deciding this petition, the Court will make a conscious effort of not giving details of what is found from the file.

##. Having considered the file, the notings made by the detaining authority, the submissions made to the detaining authority and the affidavit in reply filed by the detaining authority along with the material on which the notings are based, it is difficult to accept the argument made on behalf of the petitioner that the order is based on vague, extraneous or irrelevant ground or to say that it is passed for a wrong purpose. This Court hastens to add that this observation is made only for the limited purpose of addressing the question as to whether at this pre-detention stage, this Court should entertain this petition and it may not be taken to mean that it is a conclusive finding and, therefore, it may not be taken

to have any bearing on a pre-detention petition that may be at a later point of time.

##. Now, in view of the above legal position, this Court can entertain the petition at pre-detention stage in preventive detention only after the case of the petitioner is shown to be falling under any of the 5 categories stated in the case of Alka Subhash Gadia (Supra) or a category of a similar case. Having gone through the file, this Court is satisfied that the case of the petitioner cannot be considered to be falling under any one of the categories stated in the case of Alka Subhash Gadia (Supra). Prima facie, there does not appear anything to indicate that the order is passed against a wrong person or under a wrong provision or for the purpose other than the purpose stated in the grounds of detention. This being so, at this stage, this Court is not inclined to entertain this petition.

#. It is hereby clarified that the Court has abstained from making any observation on merits as it may cause prejudice for or against the case of any one of the parties. It would suffice to state that the order of detention which is the subject matter of this petition is passed in detail and contains all the relevant facts to indicate that the case does not fall within the purview of any of the categories enumerated in the case of Alka Subhash Gadia (Supra). This Court is, therefore, not inclined to entertain this petition at this stage. The petition is, therefore, dismissed. Notice discharged.

[A.L. DAVE, J.]

\*\*\*\*\*

pirzada/-